



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/172827

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 14, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on April 19, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone. The record was held open 14 days for submission of additional information. The information was received May 2, 2016.

The issue for determination is whether the agency correctly determined the amount of an FS overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Early Care Administration  
1220 W. Vliet St., 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care assistance in 2014 as part of a household that included her husband and two children. Both adults were employed, making the household eligible for child care.
3. As of May, 2014 child care eligibility was based on monthly household income of \$3,130. The income limit was \$3,975.

4. Petitioner's income increased in May, 2014, and based on reporting rules she should have reported the increase by July 10, 2014. Household income was above the child care limit in the months of July through November, 2014.
5. The agency discovered the higher income via a state wage match. After obtaining actual income figures, the agency determined that petitioner was overpaid \$6,647.51 in child care from August 1 through November 30, 2014, claim no. [REDACTED]. The overpayment was for all child care assistance paid during those months.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Petitioner did not contest that she forgot to report the increase in income. She noted that household income was not as high as shown on the overpayment calculations, but acknowledged that even according to her calculations the income still was above the \$3,975 limit.

Petitioner focused on the amount of the overpayment. She presented a March 3, 2016 letter from the child care center saying that for the dates of service 8/25/14 through 11/25/14 the total payments received from the state were \$5,939.33. However, agency representative [REDACTED] questioned whether the provider left off the extra "[REDACTED]" payments the provider receives for being a high-quality center, and she also questioned the dates of service on the letter. The record was held open to obtain more information.

Following the hearing Ms. [REDACTED] reported that the provider had not included the [REDACTED] payments in the March 3 letter. In addition, when Ms. [REDACTED] asked for the payments made for dates of service dating from the beginning of August, the totals matched the calculations in the overpayment notice. See May 2, 2016 letter from Alverno College Early Learning Center.

I conclude, therefore, that the agency correctly determined the amount of the child care overpayment in claim no. [REDACTED].

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner's household income put her over the child care assistance limit from August through November, 2014, and it correctly determined that amount of assistance that petitioner was overpaid during those months.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of May, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 9, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud